

**STATE OF MICHIGAN
IN THE SUPREME COURT**

Appeal from the Michigan Court of Appeals

**THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee ,**

vs.

S CT No 124055

**LEONARD LAMONT STEWART,
Defendant-Appellant.**

**Saginaw Circuit Court No. 94-010039-FC
Court. of Appeals No. 243562**

**DEFENDANT-APPELLANT'S BRIEF ON APPEAL
ORAL ARGUMENT REQUESTED**

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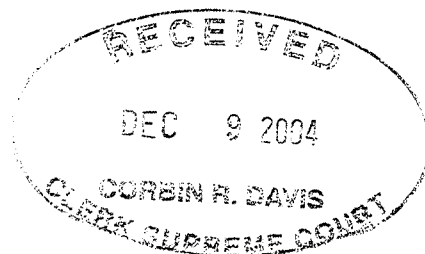


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QUESTIONS PRESENTED

ARGUMENT

I

WHETHER DUE PROCESS AND EQUAL PROTECTION
OF LAW ENTITLE DEFENDANT TO JUDICIAL
CERTIFICATION OF COOPERATION PURSUANT TO
MCL791.234(10)?

Defendant-Appellant answers: "Yes."

Trial court say: 'No.'

ARGUMENT

II

DOES **MCL** 791.234(10) HAVE A TIME LIMIT FOR A
DEFENDANT'S COOPERATION AND NONE FOR WHEN
A COURT MAY MAKE A DETERMINATION THAT
COOPERATION OCCURRED?

Defendant-Appellant answers: "Yes."

STATEMENT OF FACTS

The Defendant-Appellant, Leonard Lamont Stewart was charged in a two (2) count information with count one (1) possession with intent to deliver cocaine 650 or more or in the alternative, possession of cocaine 650 or more and count two (2) conspiracy to posses with intent to deliver cocaine 650 or more.

The case was tried to a jury. (III 86)¹

A package shipped in California was determined to contain cocaine. The police alerted the authorities in the destination city, Saginaw, Michigan, of the contents of the package. After the package was received by a Mr. Harrell the police arrived shortly thereafter and arrested Mr. Harrell who told the police that he was just getting the package for Mr. Stewart. Mr. Fields came to pick up the package and was also arrested. Mr. Fields testified at trial that the drugs were for Mr. Stewart.

Mr. Stewart denied the drugs were his and denied he had any knowledge of the drugs or the drug business before during and after trial. At a pretrial motion for separate trials Mr. Stewart's attorney stated: 'Mr. Stewart takes the position that he has no connection whatsoever with the drugs involved, and has not had – does not have any connection with Mr. Harrell or Mr. Fields regarding this possession of cocaine.' (I 5). Mr. Stewart testified at trial that he never tried to pick up the package from Mr. Harrell (V 146), that he turned himself in when he knew there was a warrant for his arrest (V 150), that he never tried to make any kind of deal with Mr. Harrell during the two weeks

¹The testimony adduced on trial of this case was transcribed into eight volumes which counsel has marked with roman numerals I through VIII seriatim. Hence, the romans in the parentheses refer to the volumes of the transcript; the arabic, to the pages within that volume.

they were in jail (V 151, 152), he denied trying to obtain cocaine and using cocaine.

The jury found Mr. Stewart guilty of delivery of cocaine over 650 grams and conspiracy to deliver over 650 grams of cocaine.

In the presentence report Mr. Stewart described his involvement in the case: "Nothing, and not guilty and is being framed." And that "I know that they let the perpetrators get away scott free." At sentencing Mr. Stewart told the judge: 'I still feel I've been framed.' (VIII 32). Mr. Stewart was sentenced to two consecutive natural life terms on June 19, 1995.

Mr. Stewart appealed as of right and the Court of Appeals affirmed the trial court. The Michigan Supreme Court denied leave to appeal.

On August 6, 2002, Mr. Stewart petitioned the Saginaw Circuit Court for a Certificate of Cooperation to obtain under MCL 791.234 (10) a 2 ½ year reduction in the time he is eligible for review by the parole board. With the reduction, Mr. Stewart would be eligible for parole review at 15 years. In his pleading Mr. Stewart advised the court that 'he had no useful or relevant information to provide' (Brief in Support of Motion, page 5). The trial court entered an order on August 13, 2002 denying entry of an order of cooperation stating:

'The Defendant states that he had no relevant or useful information to provide to law enforcement officers previously. Additionally, he states that he is "ready and willing to proffer any relevant or useful information that he may have, without undue haste. He, however, fails to allege how he will have any relevant or useful information for law enforcement officials approximately eight years after his arrest. The Court finds that due to a lack of facts, it cannot enter an order of cooperation.'

Mr. Stewart's appeal of this order to the Court of Appeals was denied and his appeal to this Honorable court was granted on June 14, 2004.

ARGUMENT

I

DUE PROCESS AND EQUAL PROTECTION OF LAW
ENTITLE DEFENDANT TO JUDICIAL CERTIFICATION OF
COOPERATION PURSUANT TO MCL791.234(10).

STANDARD OF REVIEW

This Court reviews de novo the interpretation and application of a statute as a question of law. **Cruz v State Farm Mut Automobile Ins Co**, 466 Mich. 588, 594 (2002); **People v Thousand**, 465 Mich. 149, 156 (2001). If the language of the statute is clear, "no further analysis is necessary or allowed to expand what the Legislature clearly intended to cover." **Miller v Mercy Mem Hosp**, 466 Mich. 196, 201 (2002).

Mr. Stewart submits that he is eligible for the 2 ½ year time reduction for eligibility for parole review provided by **MCL 791.234(10)** because he cooperated with law enforcement in the following ways:

1. Mr. Stewart turned himself in to the police when he was aware there was an arrest warrant issued for him.
2. Mr. Stewart answered the questions the police asked of him, but was not able to tell the police anything about drugs and drug sales for he knew nothing about those things.
3. Mr. Stewart did not abscond while on bond pending trial, during trial or pending sentencing.
4. Mr. Stewart has not accumulated any misconducts while incarcerated.

The trial court denied Mr. Stewart the 2 ½ year credit available to him pursuant to **MCL 791.234 (10)**, the Court of Appeals denied leave and this was a denial of due process and equal protection of the law. **US Const, Amend V, XIV; Const 1963, art 1,**

§§ §2, 17.

The statute in question in this case, **MCL 791.234 (10)** reads:

(10) If the sentencing judge, or his or her successor in office, determines on the record that a prisoner described in subsection (6) sentenced to imprisonment for life for violating or conspiring to violate section 7401(2)(a)(i) of the public health code, 1978 PA 368, MCL 333.7401, **has cooperated** with law enforcement, the prisoner is subject to the jurisdiction of the parole board and may be released on parole as provided in subsection (6), 2-1/2 years earlier than the time otherwise indicated in subsection (6). The prisoner is considered to **have cooperated** with law enforcement if the court determines on the record that the prisoner had no relevant or useful information to provide. The court shall not make a determination that the prisoner failed or refused to **cooperate** with law enforcement on grounds that the defendant exercised his or her constitutional right to trial by jury. If the court determines at sentencing that the defendant **cooperated** with law enforcement, the court shall include its determination in the judgment of sentence. (Emphasis added.)

Three sentences of the statute refer to some general form of cooperation with law enforcement and the statute does not define cooperate. One sentence of the statute specifies one ground a court cannot use to deny early review, that is, when “the prisoner had no relevant or useful information to provide.” The legislature could have easily used the modifiers ‘relevant or useful information’ when referring to cooperated with law enforcement in the other three sentences of the statute but they did not. Thus the court found in *People v Matelic*, 249 Mich App 1 (2001) that the term cooperate was ambiguous in its usage in the statute. Mr. Stewart agrees.

The purpose of this statute is to reduce the time a person convicted of delivery of over 650 grams of cocaine is to spend in prison, thus it is a remedial statute and

remedial statutes are to be read expansively. **Lee v. Macomb County Bd. of Commissioners**, 464 Mich. 726 (2001).

In determining the plain meaning of a word the court should consider not only the meaning of the word itself, but also "its placement and purpose in the statutory scheme." **Bailey v United States**, 516 U.S. 137, 145; 116 S. Ct. 501 (1995). "The fair and natural import of the terms employed, in view of the subject matter of the law, is what should govern," **People ex rel Twitchell v Blodgett**, 13 Mich. 127, 168 (1865)(COOLEY, J.), and as far as possible, effect must be given to every word, phrase, and clause in the statute. **Gebhardt v O'Rourke**, 444 Mich. 535, 542 (1994). Where, as here, the Legislature has not expressly defined terms used within a statute, the court may turn to dictionary definitions to aid its goal of construing those terms in accordance with their ordinary and generally accepted meanings. **Oak. Co Bd of Co Rd Comm'rs v MI Prop. & Casualty Guaranty Ass'n**, 456 Mich. 590, 604 (1998).

Webster's New World Dictionary, Second College Edition, 1997 gives the following definitions:

"Cooperation" 1. the act of cooperating; joint effort or operation 2. The association of a number of people in an enterprise for mutual benefits or profits 3. *Ecology* an interaction between organisms that is largely beneficial to all those participating

"Cooperate" 1. to act or work together with another or others for a common purpose 2. To combine so as to produce an effect 3. To engage in economic cooperation

cooperative 1. Cooperating or inclined to cooperate

Judge Wilder in his dissent in **Matelic** stated a concept or definition of cooperate

Mr. Stewart can agree with:

‘... the words “cooperate” and “cooperation” have ordinary and generally accepted meanings. The statute plainly seeks to create an eligibility for early parole release for only those prisoners who have “worked” or “acted willingly” with law enforcement officers toward the common purpose of law enforcement.’ (Id. at 30).

But Mr. Stewart disagrees with Judge Wilder’s next sentence which adds concepts to ‘cooperate’ which are not included in the statute:

‘Stated another way, those prisoners who in the past provided **information** to law enforcement that **could be legitimately used** to investigate criminal activity are granted special eligibility for parole in subsection 10 by the Legislature.’ (Emphasis added.)

Here Judge Wilder used the phrase ‘relevant or useful information’ as a modifier for all types of cooperation mentioned in the statute and changed the word ‘or’ to **and**, thus incorrectly reasoning the statute requires only (except for the one statutorily specified type of cooperation) a type of cooperation that is informational **and** useful to the police specifically to investigate crime and places a value judgment on the cooperation of legitimate. None of these restrictions are specified by the statute and constitute judicial rule making.

The conflicts panel in **People v Cardenas**, 2004 Mich. App. LEXIS 2334 (Mich. Ct. App. Sept. 7, 2004), convened to resolve the conflict between **Matelic** and **People v Cardenas**, 260 Mich App 801 (2004), adopted Judge Wilder’s dissent in **Matelic** and added their own non-statutory qualifier, stating there were two ways to cooperate:

(1) Cooperation may be established by showing that a defendant provided information relating to his unlawful activity that was relevant and useful to law enforcement

officials.

(2) Cooperation may also be established by demonstrating that the defendant never possessed information relating to his unlawful activity that was relevant and useful to law enforcement.

The **Cardenas** conflicts panel thus added another modifier to the type of cooperation the statute requires which is 'his unlawful activity' not just any information.

Mr. Stewart asserts, in answer to the Court's question as to what constitutes "cooperation" for the purpose of **MCL 791.234(10)**, that cooperation is as Judge Wilder first described it: the words "cooperate" and "cooperation" have ordinary and generally accepted meanings. The statute plainly seeks to create an eligibility for early parole release for only those prisoners who have "worked" or "acted willingly" with law enforcement officers toward the common purpose of law enforcement." (**Matelic**, at 30). Thus, any defendant who has not run from the police or has not resisted arrest or has answered all questions put to him or her has cooperated with the police. When a defendant gives the police additional information, possibly not even requested information, it is also cooperation but the statute clearly does not require cooperation to be limited to 'providing relevant and useful information about his or her own crime.'

Police officers routinely testify that defendants cooperated with them when defendants did not resist arrest or defendants answered questions. Police officers have no difficulty understanding the word cooperate and routinely testify in court how a person cooperated at the stop, arrest and or interrogation.

The **Matelic** and the **Cardenas** courts have engaged in "judicial lawmaking" by adding to the requirements of the statute while purporting to track an imagined

legislative intent. See Justice Young's concurrence in **People v Javens**, 469 Mich 1025 (2004) and **People v McIntire**, 461 Mich 147, 156 (1999).

Mr. Stewart by turning himself in to the police, by not absconding on bond, and by not having any misconducts while incarcerated has cooperated with law enforcement. Additionally, Mr. Stewart should have been considered to have cooperated with law enforcement because he answered questions put to him by the police but had no relevant or useful information to provide. The trial court was incorrect when it gave more weight to Mr. Stewart's 'offer to give relevant or useful information' than his past insistence that he knew nothing and should have granted the order of cooperation based on his past insistence that he knew nothing. Since the trial court appeared to assume that there was a question of fact as to whether or not Mr. Stewart had relevant or useful information to give, then an evidentiary hearing would be necessary, as suggested in **Cardenas**, at slip opinion page 5.

Mr. Stewart's cooperation with law enforcement entitles him to the 2 ½ year early parole review eligibility defined in **MCL 791.234(10)**. Mr. Stewart's repeated assertions that he knew nothing about the drug business entitles him to the 2 ½ year early parole review eligibility defined in **MCL 791.234(10)**.

This Honorable Court should remand this case to the trial court for the entry of an order granting an order of cooperation making him eligible for the 2 ½ year early parole review eligibility.

ARGUMENT

II

MCL 791.234(10) HAS A TIME LIMIT FOR A DEFENDANT'S COOPERATION AND NONE FOR WHEN A COURT MAY MAKE A DETERMINATION THAT COOPERATION OCCURRED.

STANDARD OF REVIEW

This Court reviews de novo the interpretation and application of a statute as a question of law. **Cruz v State Farm Mut Automobile Ins Co**, 466 Mich. 588, 594 (2002); **People v Thousand**, 465 Mich. 149, 156 (2001). If the language of the statute is clear, "no further analysis is necessary or allowed to expand what the Legislature clearly intended to cover." **Miller v Mercy Mem Hosp**, 466 Mich. 196, 201 (2002).

The Legislature used the words 'has cooperated' with law enforcement and 'to have cooperated' with law enforcement in **MCL 791.234(10)**. It is clear that these verbs are present perfect tense verbs as stated by Judge Wilder in his dissent in **Matelic** and the conflict panel in **Cardenas** adopted this interpretation. In John McWhorter's book, **The Power of Babel**, published in 2001, he showed the use of the present perfect, that it is a reference to a recently completed action that has bearing on the present:

"In English we distinguish 'I found the money' from 'I have found the money'; the former implies that the event is past and done, whereas the latter implies that the effects of the finding extend into the present, that the finding of the money will serve as the basis for further developments."

(The court could also look at the following web page:

<http://web2.uvcs.uvic.ca/elc/studyzone/410/grammar/ppvpast.htm> which clearly

indicates that present perfect tense indicates that the time period has not finished and time is not specific.)

The Legislature could have left out the word 'has' in 'has cooperated' and the sentence would have been complete and understandable. Without the addition of the word 'has' the verb cooperated would clearly have been in the simple past tense and not a recently completed action that has bearing on the present. Since the Legislature chose 'has cooperated' any recently completed cooperation could be presented to a court for consideration of cooperation pursuant to **MCL 791.234(10)**

Mr. Stewart agrees with the conflict panel in **Cardenas** that the cooperation must occur some time prior to the filing of the motion for a judicial determination if the 2 ½ year credit should be given. As suggested in that opinion, if a person has not already cooperated with law enforcement in any of the (non-all-inclusive) ways listed in Argument I of this brief, then a defendant could write out all the ways he or she could cooperate with law enforcement and submit it to the prosecutor. The defendant can then file a motion including the information sent to the prosecutor and submit it to the court requesting an order granting early review.

Because the Legislature used the language 'sentencing judge or his or her successor in office' it is clear that as long as there is a successor judge to the sentencing judge the issue of a defendant's cooperation can be addressed by that judge. The sentencing judge or any judge that succeeds him or her can determine if cooperation has occurred.

Mr. Stewart would not say that **Matelic** was wrongly decided, but would suggest that the **Cardenas** panel's approach to reducing the cooperative act or information to some form of writing of what the defendant intends to rely on as cooperation would be helpful to the court.

Mr. Stewart's request for cooperation time credit under **MCL 791.234(10)** was timely for he cooperated in all the ways listed in Argument I well before he requested the credit. This Honorable Court should remand for entry of an order granting Mr. Stewart's time credit for cooperation under **MCL 791.234(10)**.

RELIEF

Wherefore for all these reasons, Defendant-Appellant Leonard Stewart respectfully requests that this Honorable Court to remand the case for entry of an order of cooperation under **MCL 791.234 (10)**.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Blanchard', written over a horizontal line.

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